Appl. No.: 09/693,481
Amdt. dated 11/03/2005
Reply to Office action of 05/04/2005

REMARKS

This response is submitted with a request for a three month extension and appropriate fee in reply to the Office Action dated May 4, 2005. Claims 1, 3 and 6-13 currently stand rejected and are the only claims currently pending in the present application. Applicants have amended claim 1 to particularly point out and distinctly claim the subject matter which the Applicants regard as the invention. No new matter has been added by the amendment.

In light of the amendment and the remarks presented below, Applicants respectfully request reconsideration and allowance of all now-pending claims of the present invention.

Claim Rejections - 35 USC §112

Claims 1, 3 and 6-13 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicants regard as the invention. Specifically, the Office Action asserts that the claim language "may be" as recited in independent claim 1 renders independent claim 1 and all dependent claims vague and indefinite.

Applicants have amended independent claim 1 to replace "may be adjusted" with --is adjustable--. Support for such amendment can be found at least at page 4, lines 22-26. Accordingly, Applicants respectfully submit that the rejections of claims 1, 3 and 6-13 under 35 U.S.C. §112, second paragraph, are overcome.

Claim Rejections - 35 USC §102

Claims 1 and 7 currently stand rejected under 35 U.S.C. §102(e) as being anticipated by Ayres (U.S. Patent No. 6,738,371).

Independent claim 1 has been amended to recite, *inter alia*, the transfer rate for data packet transmission is adjustable by a subscriber at any time during the on-going network session based on *adjustment* of the subscriber-selected bandwidth during the on-going network session. In other words, the transfer rate for data is changeable during a network session responsive to adjustment of the bandwidth that has been selected by the subscriber during

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the network session. For example, a subscriber may initially select the bandwidth to be 100 kilobytes per second (kbps). During the network session, the bandwidth may be adjusted to 50 kbps due to, for example, network congestion, cost concerns, etc.

Ayres is directed to a router (20) including a flow manager (54) which is configured to dynamically adjust a rate of data packet flow during a network session. Ayres discloses that the flow manager (54) makes these dynamic adjustments based on current operating conditions of the router (20) (col. 9, lines 6-9 and lines 60-63). For example, the flow manager (54) may make such an adjustment based on off-peak usage criteria such as time of day variances (col. 9, lines 10-13). Meanwhile, adjustments made by the flow manager (54) are also made in an effort to ensure an end user receives at least a quality of service level defined in a quality of service (QOS) profile (col. 9, lines 13-18 and col. 8, lines 33-37). The QOS profiles are maintained by the internet service provider (ISP) (col. 8, lines 33-34). Ayres fails to teach or suggest that the QOS profiles are adjustable by the end user (subscriber) during a network session. Furthermore, Ayres discloses that the flow manager (54) may be configured by the ISP (col. 9, lines 63-67) and fails to teach or suggest that the flow manager (54) is configurable by the end user (subscriber). Thus, the flow manager (54) makes dynamic adjustments responsive to current operating conditions and preset QOS profile information, but without input by the end user (subscriber).

To the contrary, the claimed invention recites <u>the transfer rate for data packet transmission is adjustable by the user at any time during the on-going network session based on</u> <u>*adjustment* of, e.g. a change to, the subscriber-selected bandwidth during the on-going</u> <u>network session.</u> The Office Action cites col. 8, lines 33-37 and 56-60 of Ayres as disclosing that "rate adjustment are made based on customer QOS profile" with a correlation then being drawn between the QOS profile and a subscriber-selected profile. Even assuming for the sake of argument that this correlation between the QOS profile and the subscriber-selected profile is correct (an assumption with which the Applicants explicitly do not concur), the cited passage, in particular, and all of Ayres, in general, fails to teach or suggest that rate adjustments are made based on *adjustment* of customer QOS profile *made during an on-going network session.* Instead, Ayres adjusts the data packet flow based upon a QOS profile that is not taught or

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suggested to be charged or otherwise adjusted during the network session. Thus, Ayres neither teaches nor suggests the transfer rate for data packet transmission is adjustable by the user at any time during the on-going network session based on *adjustment* of the subscriber-selected bandwidth during the on-going network session as claimed in independent claim 1. Accordingly, independent claim 1 is patentable over Ayres.

Claim 7 depends directly from independent claim 1, and thus includes all the recitations of independent claim 1. Therefore, dependent claim 7 is patentable for at least the same reasons as given above for independent claim 1.

Accordingly, Applicants respectfully submit that the rejections of claims 1 and 7 are overcome.

Claim Rejections - 35 USC §103

Dependent claims 3, 6 and 8-13 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Ayres, in view of either one or a combination of Gulliford et al. (U.S. Patent No. 6,618,355, hereinafter "Gulliford") (claim 3), Salkewicz (U.S. Patent No. 6,609,153) (claim 6), Fowler (U.S. Patent No. 5,793,978) (claims 8-13), and Barton (U.S. Patent No. 6,310,886) (claim 12).

As stated above, Ayres, cited as the primary reference, fails to teach or suggest the transfer rate for data packet transmission is adjustable by the user at any time during the on-going network session based on *adjustment* of the subscriber-selected bandwidth during the on-going network session as claimed in independent claim 1. Similarly, it is respectfully submitted that none of the secondary references teach or suggest the transfer rate for data packet transmission is adjustable by the user at any time during the on-going network session based on *adjustment* of the subscriber-selected bandwidth during the on-going network session nor are any of the secondary references cited as disclosing such feature. Thus, the cited references, either individually or in combination, fail to render independent claim 1 obvious for at least the same reasons described above. Claims 3, 6 and 8-13 depend either directly or indirectly from independent claim 1, and thus include all the recitations of independent claim 1. Therefore,

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dependent claims 3, 6 and 8-13 are patentable for at least those reasons given above for independent claim 1.

Accordingly, Applicants respectfully submit that the rejections of dependent claims 3, 6 and 8-13 are overcome.

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CONCLUSION

In view of the amended claim and the remarks submitted above, it is respectfully submitted that the present claims are in condition for immediate allowance. It is therefore respectfully requested that a Notice of Allowance be issued. The Examiner is encouraged to contact Applicants' undersigned attorney to resolve any remaining issues in order to expedite examination of the present invention.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

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